

Kansas Adjutant General's Department – State Human Resources Guidelines

2011

10/2011

REF: Secretary of Administration Memorandum 1/21/2011-Department of Administration Bulletin No. 09-03

FAMILY MEDICAL LEAVE ACT POLICY

It is the policy of the Adjutant General's Department to grant employees leaves of absence under certain circumstances.

Comment:

- (1) The Adjutant General's Department will comply with the provisions of the federal Family and Medical Leave Act ("FMLA").
- (2) Employees generally are eligible for FMLA leaves of absence if they have completed at least one year of service, or as specified by law. The granting and duration of each leave of absence and the compensation received by the employee, if any, during the leave of absence will be determined by the Adjutant General's Department in conjunction with applicable federal and state law. The following types of leaves will be considered:
 - (a) Medical Leave of Absence: Employees who are unable to work because of a serious health condition, disability, or work-related injury may be granted a medical leave of absence. This type of leave covers disabilities caused by pregnancy, childbirth, or other related medical conditions. The Adjutant General's Department requires certification of an employee's need for medical leave, both before the leave begins and on a periodic basis thereafter, by the employee's health care provider.
 - (b) Parental Leave of Absence: Female employees, when not disabled by pregnancy or childbirth (see above), and male employees may be granted a parental leave of absence to care for the employee's child upon birth or in connection with a child's placement with the employee for adoption or foster care.
 - (c) Family Care Leave of Absence: Employees may be granted a family care leave of absence for the purpose of caring for the employee's child, spouse, or parent who has a serious health condition. The Adjutant General's Department requires certification of the family member's serious health condition, both before the leave begins and on a periodic basis thereafter, by the family member's health care provider.
 - (d) Leave to Care for a Family Member Injured in Military Service: On January 28, 2008, President Bush signed into law the National Defense Authorization Act (NDAA) to expand the FMLA to allow eligible employees to take leave to care for an injured or ill family member serving in the military. Employees eligible for FMLA leave who also are the spouse, son, daughter, parent, or next of kin of a covered service member may take up to 26 weeks of leave in a "single" 12-month period to care for the injured veteran. "Next of kin" is defined to include the nearest blood relative to the service member. The leave is available when the service member is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a "serious injury or illness." The Adjutant General's Department requires certification of the family member's serious injury or illness, both before the leave begins and on a periodic basis thereafter, by the family member's health care provider.
- (3) Every employee on a medical leave, parental, or family care leave of absence will be required to use all accrued personal, vacation, and sick days while on leave. However, employees may not use paid leave if they are receiving compensation under the Adjutant General's Department's disability or workers' compensation

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insurance programs.

- (4) The Adjutant General's Department will continue existing health insurance coverage and provide other benefits to employees on leave as required by law.
- (5) Employees returning from a leave of absence will be reinstated to their same job or to an equivalent job with equivalent status and pay, to the extent required by law.
- (6) Employees returning from a medical leave must provide certification of their ability to perform the functions of their job.
- (7) Employees returning from a military leave also must comply with all of the reinstatement requirements specified by federal and state law.
- (8) If the same job or one of equivalent status and pay is not available as a result of a reduction in force, the employee will be treated in the same manner as though he had been actively employed at the time of the reduction in force.
- (9) If an employee fails to return to work at the conclusion of an approved leave of absence, including any extension of the leave, the employee will be considered to have voluntarily terminated employment.

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APPENDIX: Notice to Employees Regarding the Family and Medical Leave Act

The Adjutant General's Department will comply with all applicable requirements of the Family and Medical Leave Act ("FMLA").

The FMLA requires private employers with 50 or more employees and all public agencies, including state, local, and federal employers, and local education agencies (schools), to provide eligible employees up to 12 weeks of unpaid, job-protected leave in any 12-month period for certain family and medical reasons.

Employee Eligibility

The FMLA defines eligible employees as employees who:

- (1) have worked for the Adjutant General's Department for at least 12 months; or
- (2) have worked for the Adjutant General's Department for at least 1,250 hours in the previous 12 months.

Leave Entitlement

Eligible employees may take leave for the following reasons:

- (1) to care for the employee's child upon birth or in connection with a child's placement with the employee for adoption or foster care;
- (2) to care for a parent, spouse, or child with a serious health condition; or
- (3) when the employee is unable to work because of the employee's own serious health condition.

Serious health condition. According to the FMLA, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- (1) inpatient care (i.e., an overnight stay), including any period of incapacity or any subsequent treatment in connection with the inpatient care; or
- (2) "continuing treatment" by a health care provider which includes any period of incapacity as a result of:
 - (a) a health condition lasting more than three consecutive days and any subsequent treatment or period of incapacity relating to the same condition that also includes
 - (i) treatment two or more times by or under the supervision of a health care provider; or
 - (ii) one treatment by a health care provider with a continuing regimen of treatment;
 - (b) pregnancy or prenatal care, including severe morning sickness;
 - (c) a chronic serious health condition that continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity;
 - (d) a permanent or long-term condition for which treatment may not be effective, if the employee is under the supervision of a health care provider (but not necessarily receiving active treatment); or
 - (e) any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated. For further information on what is considered "continuing treatment," contact the Human Resources Department. Spouses employed by the same employer are jointly entitled to a combined leave of 12 workweeks of family leave in the 12-month period to care for a parent who has a serious health condition. However, each spouse may take up to 12 workweeks of leave to care for a child or spouse with a serious health condition.

Birth, adoption, or foster care of children. FMLA leave for birth or placement for adoption or foster care must conclude within 12 months of the birth or placement. In addition, spouses employed by the same employer are jointly entitled to a combined leave of 12 workweeks of parental leave in the 12-month period for the birth or placement of a child for adoption or foster care.

Intermittent or reduced work schedule leave. In certain circumstances, eligible employees may take FMLA leave intermittently (for example, in blocks of time) or by reducing their work schedule. If FMLA leave is to care for a child after the birth or placement for adoption or foster care, employees may take their FMLA leave intermittently or on a

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reduced work schedule only with the Adjutant General's Department's permission. If the FMLA leave is because of the employee's serious illness or to care for a seriously ill family member, the employee may take the leave intermittently or on a reduced work schedule if it is medically necessary.

Notice and Certification

Employees who want to take FMLA leave ordinarily must provide the Adjutant General's Department at least 30 days notice of the need for leave, if the need for leave is foreseeable. If the employee's need is not foreseeable, the employee should give as much notice as is practicable. When leave is needed to care for an immediate family member or for the employee's own illness and is for planned medical treatment, the employee must try to schedule treatment in order to minimize disruptions of the Adjutant General's Department's operations.

In addition, employees who need leave for their own or a family member's serious health condition must provide medical certification from a health care provider of the condition. The Adjutant General's Department also may require a second, and if necessary, a third opinion (at the Adjutant General's Department's expense), periodic recertifications of the serious health condition, and, when the leave is a result of the employee's own serious health condition, a fitness for duty report to return to work.

The Adjutant General's Department may delay leave to employees who do not provide proper advance notice of the foreseeable need for leave. The Adjutant General's Department also may delay or deny approval of leave for lack of proper medical certification.

Benefits During FMLA Leave

Employees taking leave under the FMLA are entitled to receive health benefits during the leave at the same level and terms of coverage as if they had been working throughout the leave. If applicable, arrangements will be made for employees to pay their share of health insurance premiums while on leave. If an employee chooses not to return to work from FMLA leave, the Adjutant General's Department may be entitled to recover premiums it paid to maintain health coverage during the leave.

The employee's use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave. However, the employee must use any accrued paid vacation, personal, and sick days during an unpaid FMLA leave taken because of the employee's own serious health condition or the serious health condition of a family member." In addition, the employee must use any accrued paid vacation or personal days (but not sick days) during FMLA leave taken to care for a newborn or newly placed child.

Job Restoration After FMLA Leave

The Adjutant General's Department generally will reinstate an employee returning from FMLA leave to the same or equivalent position with equivalent pay, benefits, and other employment terms and conditions. However, an employee on FMLA leave does not have any greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.

Certain highly compensated key employees also may be denied reinstatement when necessary to prevent "substantial and grievous economic injury" to the Adjutant General's Department's operations. A "key" employee is an eligible salaried employee who is among the highest paid ten percent of the Adjutant General's Department's employees within 75 miles of the worksite. Employees will be notified of their status as a key employee, when applicable, after they request FMLA leave.